IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5618 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMAD AKIL-ALIAS AKIL BHADVO MOHADAD YAKUB BANARASI

Versus

STATE OF GUJARAT THROUGH ADDITIONAL SECRETARY

Appearance:

1. Special Civil Application No. 5618 of 2001

MR PS CHAMPANERI for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/12/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner - detenu has challenged the order of detention dated

28/5/2001 passed by the Police Commissioner, Surat City under the powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "the Act" for short).

2. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three criminal cases registered against the detenu under the The Prevention of Immoral Traffic Act and also relying upon the statement of witnesses recorded by the detaining authority. The learned advocate for the detenu has submitted that the last offence is registered against the detenu before the Chawk Bazar Police Station vide CR No.II-394 of 2000 on 14/12/2000 and the detaining authority has passed the detention order on 28/5/2001 and therefore, there is a delay of more than five months in passing the detention order. No affidavit explaining the delay has been filed either by the detaining authority or by the State. Learned AGP has fairly admitted the same. The learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

3. It appears that the last offence is registered against the detenu on 14/12/2000 and the order of detention has been passed on 28/5/2001 and hence, there is a delay of more five months in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be

sustained. Learned advocate for the petitioner does not press any other points.

4. In view of the above, the petition is allowed. The order of detention dated 28/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Mohamad Akil alias Akil Bhadvo Mohamad Yakub Banasari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)
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